IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9059 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARSHANBHAI ALIAS KANO BALUBHAI ODEDARA MER

Versus

COMMISSIONER OF POLICE

Appearance:

Ms. MITA PANCHAL for NANAVATY ADVOCATES for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 17/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this petition under Article 226 of the Constitution of Inida, challenged the legality and validity of the order of detention dated. 4.5.2000, Annexure-A, in respect of petitioner passed by respondent no. 1 in exercise of his

powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

As per the papers of grounds of detention, it is the case of the detaining authority that the petitioner detenu is a 'dangerous person' within the meaning of sec. 2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at a subjective satisfaction, the detaining authority has placed reliance on one solitary IPC case bearing CR NO. 203/99 registered in Sola High Court Police Station and that case is pending with the Investigating Officer for investigation. The detaining authority has also placed reliance on the statements of two anonymous witnesses, whose identity has not been disclosed by claiming privilege under sec. 9(2) of the Act. He verified the statements of said two witnesses on 3.5.2000 and passed an order of detention on the very next day i.e. on 4.5.2000 and that order has been challenged in this writ petition.

3. Though rule has been served upon all the respondents, they have not filed affidavits-in- reply, in reply to main petition controverting the grounds of attack mentioned in the memo of petition.

4. Ms. Mita Panchal learned advocate appearing for the petitioner has argued that in this case the detaining authority has wrongly exercised the privilege which he has claimed under sec. 9(2) of the Act. She has argued that the statements of two witnesses were recorded, first statement on 30.4.2000 and another on 1.5.2000 and both the statements were verified by the detaining authority on 3.5.2000 and on the very next day, i.e. on 4.5.2000 the detaining authority has passed an order of detention. She has cited an authority of Kalidas CHandubhai Kahar vs. State of Gujarat & Ors., reported in 1993(2) GLR 1659, wherein it has been held that the detaining authority is expected to do some exercise before actually exercising the privilege under sec. 9(2) of the Act. This present case is squarely falls within the four corners of the cited case.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention dated 4.5.2000 passed by respondent no. 1 in respect of the detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceeding. Rule

made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

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